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 Burson and Williams.*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JIMMY EARL DOWNS,

Plaintiff,

v.

MARGARET LEFFNER, *et. al.*,

Defendants.

Case No. 2:12-cv-00326-GMN-GWF

**STIPULATION AND ORDER TO
 DISMISS WITH PREJUDICE**

Plaintiff Jimmy Earl Downs, *pro se*, and Defendants, by and through their counsel, Catherine Cortez Masto, Attorney General of the State of Nevada, and Robert Simon, Deputy Attorney General, hereby stipulate and agree, pursuant to Fed. R. Civ. P. 41 (a)(2), that all proceedings in the above-captioned matter be DISMISSED WITH PREJUDICE upon Order of the Court, with both parties to bear their own fees and costs.

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1 The stipulation for dismissal was agreed upon as part of a settlement between the
2 parties, which is attached hereto.

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4 Dated: November 15, 2012.

By: 
JIMMY EARL DOWNS
Plaintiff, pro se

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8 Dated: November 26, 2012.

CATHERINE CORTEZ MASTO
Attorney General

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10 By: 
ROBERT SIMON
Deputy Attorney General
Bureau of Litigation

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13 *Attorneys for Defendants*

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16 The parties having stipulated and for good cause shown:

17 IT IS SO ORDERED that this matter be dismissed with prejudice and for each party to
18 bear their own fees and costs.

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JUDGE, UNITED STATES DISTRICT COURT

21
22 DATED: November 26, 2012

1 **COMPROMISE AGREEMENT AND RELEASE**

2 Plaintiff Jimmy Earl Downs ("Plaintiff") and the Defendants Cheryl Burson, David
3 Grusman, Howard Skolnik, Harold Wickham, Brian Williams, the Nevada Department of
4 Corrections, the State of Nevada, and any and all other individuals or entities named in
5 Plaintiff's underlying lawsuits pending in the United States District Court, District of
6 Nevada case numbers 2:07-cv-00116-JCM-VCF and 2:12-cv-00326-GMN-GWF
7 (hereinafter "Defendants") on behalf of themselves and all representatives, employees,
8 employers, agents, attorneys, affiliates, successors, heirs, and assigns, in consideration
9 of the promises made herein, agree as follows:

10 **Nature and Effect of Agreement**

11 1. This agreement consists of a compromise and settlement by the parties of
12 their claims against the other party, and a release given by each party to the other
13 relinquishing all claims against the other. By executing this agreement, each of the
14 parties intends to and does hereby extinguish the obligations heretofore existing
15 between them. This agreement is not, and shall not be treated as, an admission of
16 liability by any party for any purpose. This agreement is entered into in good faith, in
17 accordance with NRS 17.245 *et seq.*

18 2. The scope of this agreement covers all events and disputes described
19 herein and those events or occurrences complained of in the legal actions described in
20 paragraphs 5-7 of this agreement.

21 3. The parties agree and acknowledge this agreement is enforceable in any
22 prior, on-going, or future administrative hearing, inmate request ("kites"), or grievance
23 (formal or informal) arising from or related to the actions described in paragraphs 5-7 of
24 this agreement.

25 4. The parties acknowledge that this agreement is a complete compromise of
26 all matters involving disputed issues of law and fact relating to the actions described in
27 paragraphs 5-7 of this agreement and the parties assume the risk that the facts or law
28 may be otherwise than they believe when entering into this agreement. Plaintiff is

1 further prevented from arguing or asserting this agreement is an admission of fault,
2 liability, or guilt as to any of the claims set forth in paragraphs 5-7.

3 Nature and Status of Dispute

4 5. On January 18, 2007, Plaintiff filed his *Civil Rights Complaint* in the Eighth
5 Judicial District Court, State of Nevada, entitled *Downs v. Grusman, et. al.*, case
6 number A 533747 which was later removed to the United States District Court, District
7 of Nevada and given the case number 2:07-cv-00116-JCM-VCF. All papers, pleadings,
8 and orders from this action are hereby incorporated herein as though set forth in full at
9 this point.

10 6. On January 10, 2012, Plaintiff filed his *Civil Rights Complaint* in the Eighth
11 Judicial District Court, State of Nevada, entitled *Downs v. Leffner, et. al.*, case number
12 A-12-654462-C which was later removed to the United States District Court, District of
13 Nevada and given the case number 2:12-cv-00326-GMN-GWF. All papers, pleadings,
14 and orders from this action are hereby incorporated herein as though set forth in full at
15 this point.

16 7. These lawsuits allege various purported violations of Plaintiff's
17 constitutional rights and/or federal laws relating to his incarceration. Defendants have
18 appeared in various ways in both of these actions and have opposed, denied, and/or
19 challenged Plaintiff's allegations in both of these lawsuits.

20 Resolution of Dispute

21 8. Plaintiff will sign and deliver to Defendants' counsel signed Stipulations
22 and Orders for Dismissal with Prejudice for each of the legal actions identified in
23 paragraphs 5-6 as set forth above.

24 9. Defendants agree to pay a total of THREE HUNDRED AND FIFTY
25 DOLLARS (\$350.00) to Plaintiff in the form of a check made payable to Plaintiff within
26 two (2) weeks of the receipt of the signed Stipulations and Orders for Dismissal with
27 Prejudice for the lawsuits identified in paragraphs 5-6 as set forth above.

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1 that party or that party's personal representatives, employees, agents, descendants,
2 ancestors, dependants, heirs, affiliates, successors, executors, attorneys,
3 administrators, spouses, and assigns should eventually wish to bring additional claims,
4 or suffer additional liability or damages arising out of the matter referred to in
5 paragraphs 5-7 of this agreement, no party will be able to make any claims or pursue
6 any liability or damages that may exist as of the date of this release but which the party
7 does not know exist, and which, if known, would materially affect that party's decision to
8 execute this release, whether such decision is the result of ignorance, oversight, error,
9 negligence, or any other cause.

10 No Warranties or Representations

11 13. The undersigned warrant that no promise or inducement has been offered
12 except as herein set forth; that this release is executed without reliance upon any
13 statement or representation of the person or parties released or their representatives
14 concerning the nature and extent of the damages and/or the nature and extent of the
15 legal liability therefore and/or the nature and extent of liability insurance available with
16 respect thereto.

17 No Assignments of Rights

18 14. The parties represent that they have not heretofore assigned or
19 transferred, or purported to assign or transfer, to any person or entity, any claim or any
20 portion thereof, or interest therein, and agree to indemnify, defend, and hold one
21 another or any related person or entity of the parties, as described above, harmless
22 from and against any and all claims, based on or arising out of any such assignment or
23 transfer, or purported assignment or transfer, of any claims or any portion thereof or
24 interest therein.

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Advice of Attorney

15. Each party warrants and represents that in executing this agreement, each party has had the opportunity to consult an attorney and that each party fully understands the terms of this agreement. Each party further acknowledges and represents that, in executing this release, each party has not relied on any inducements, promises, or representations made by the other party or its attorney that are not expressly set forth in this agreement.

Conditions of Execution

16. Each party acknowledges and warrants that each party's execution of this release is free and voluntary, that the undersigned is of legal age, legally competent to execute this Release, and executes this Release after careful deliberation and consideration.

Execution of Other Documents

17. Each party to this agreement shall cooperate fully in the execution of any and all documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this agreement.

Attorneys' Fees

18. Except as otherwise provided above, each party to this agreement shall bear all attorneys' fees and costs arising from that party's own counsel in connection with the dispute set forth in paragraphs 5-7 the matters referred to herein, and all related matters.

If any party is required to employ an attorney to enforce the provisions of this agreement, the party may recover its reasonable attorneys fees incurred to enforce the provisions of this agreement. This paragraph shall be applicable to this entire agreement.

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Res Judicata or Collateral Estoppel

19. If a dispute or controversy, arising from or relating to this Agreement, subsequently arises between the parties, or their agents, principals, or assigns, including a dispute over whether a subsequent, independent lawsuit reasserts claims now settled by this agreement and whether such reasserted claims should be barred by the doctrines of *res judicata* or *collateral estoppel*, and such a controversy requires resolution by means of arbitration, court adjudication, court hearing, or trial, the prevailing party of any such dispute shall be entitled to recover, as a matter of right, its reasonable attorneys' fees and/or costs expended in resolving such matters.

Entire Agreement

20. This agreement contains the entire agreement between the parties.

Effective Date

21. This agreement shall become effective immediately upon execution by the parties, supersedes any previous agreements or understandings, and may not be modified except in writing signed by all parties.

Governing Law

22. This agreement is entered into in Nevada and shall be construed and interpreted in accordance with federal laws, rules of procedure, and common law in the Ninth Circuit, except where state law controls or governs this Agreement, or any portion thereof. Where state law is to be applied, this Agreement, or the relevant portions thereof, shall be construed, interpreted, and enforced in accordance with the laws, rules of procedure, and/or common law of the State of Nevada.

Dated: November 15, 2012.

By: 
JIMMY EARL DOWNS
Plaintiff, pro se

Dated: November 26, 2012.

On Behalf of Defendants

By: 